

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA

C O N F I D E N T I A L STATE 208118

E.O. 11652: GDS

TAGS: EFIS, PFOR, BR, US

SUBJECT: US-BRAZIL SHRIMP AGREEMENT

REF: BRASILIA 4346

1. IN VIEW OF PARAGRAPHS 3 AND 4 REFTTEL, DEPT HAS BEEN CONSIDERING HOW TO APPROACH SHRIMPING ARRANGEMENTS WITH GOB UPON EXPIRATION OF PRESENT AGREEMENT AT END OF YEAR. ESSENTIALLY, THREE OPTIONS PRESENT THEMSELVES AND ARE DISCUSSED BELOW. DEPT AND OTHER USG AGENCIES, AS WELL AS SHRIMP INDUSTRY, HAVE GENERALLY BEEN QUITE SATISFIED WITH AGREEMENT AND ITS OPERATION DURING PAST SEVERAL YEARS. EMBASSY IS WELL AWARE OF PURPOSE AND RATIONALE OF AGREEMENT. NOW, PASSAGE OF US 200-MILE LEGISLATION CALLS INTO QUESTION CERTAIN ASPECTS OF SHRIMP AGREEMENT WITH GOB, AND THE POST-1976 SHRIMP RELATIONSHIP WITH BRAZIL MUST BE ANALYZED IN LIGHT OF THIS LEGISLATION, AS WELL AS OF OTHER CONSIDERATIONS.

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2. THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 (PL 94-265) WILL GENERALLY RESULT IN ACCEPTANCE BY THE USG OF COASTAL STATE MANAGEMENT OUT TO 200 MILES OF COASTAL FISHERY RESOURCES. (COPIES OF THE ACT HAVE BEEN POUCHED TO ALL EMBASSIES.) THUS, WHILE STILL REJECTING GOB

TERRITORIAL SEA CLAIM, USG IS IN POSITION TO ACCEPT GOB FISHERY MANAGEMENT OF SHRIMP OUT TO 200 MILES. UNDER TERMS OF NEW ACT, THIS ACCEPTANCE IS CONDITIONED ON THE FULL UTILIZATION OF THE SHRIMP RESOURCE, MEANING THAT THE DIFFERENCE BETWEEN THE ALLOWABLE CATCH AND BRAZILIAN HARVESTING CAPACITY MUST BE MADE AVAILABLE TO FOREIGN FISHING. LAW PROVIDES THAT USG WILL MAKE QUOTE FULL UTILIZATION UNQUOTE DETERMINATIONS UNILATERALLY WITH RESPECT US COASTAL RESOURCES, TAKING INTO ACCOUNT BEST SCIENTIFIC EVIDENCE AVAILABLE; HOWEVER, WITH RESPECT FOREIGN COASTAL RESOURCES, USG WOULD SEEK CONSULTATIONS/NEGOTIATIONS ON THIS POINT WITH FOREIGN GOVERNMENT CONCERNED. MOREOVER, USG ACCEPTANCE OF GOB MANAGEMENT MUST ALSO BE CONDITIONED ON GENERAL PROPOSITION THAT ACCESS TO THE SURPLUS TAKE INTO ACCOUNT US TRADITIONAL FISHING ACTIVITY AND BE GOVERNED BY TERMS NOT MORE RESTRICTIVE THAN ACCESS PROVISIONS IN US LAW. (SEE SECTION 201 OF PL 94-265.)

3. WITH PROVISIONS OF US LAW IN MIND, AND WITH OUR GOALS BEING (A) TO PROTECT OUR INDUSTRY INTEREST AND (B) TO BUILD A FISHERY RELATIONSHIP THAT AVOIDS LEGISLATIVE SANCTIONS, THREE OPTIONS ARE POSSIBLE FOR 1977: EXTEND PRESENT AGREEMENT, NEGOTIATE A NEW AGREEMENT, OR OPERATE WITHOUT AN AGREEMENT.

4. FROM OUR POINT OF VIEW, PRESENT AGREEMENT COULD BE EXTENDED FOR A SHORT PERIOD OF UP TO A YEAR. THE BASIC DIFFICULTY WITH THIS OPTION FROM US SIDE OF COIN IS THAT CONGRESS MAY SERIOUSLY QUESTION CONTINUING NEED TO PAY GOB ENFORCEMENT COSTS, IN LIGHT OF US ACCEPTANCE OF 200-MILE FISHERY ZONE AND FACT THAT FOREIGN STATES WILL NOT BE PAYING FOR US ENFORCEMENT IN US ZONE.

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5. THE SECOND OPTION OF NEGOTIATING A NEW AGREEMENT IS ALSO POSSIBLE. SUCH AN AGREEMENT MIGHT WELL BE SIMILAR TO AGREEMENTS USG IS NEGOTIATING WITH NATIONS FISHING OFF OUR COAST AND WOULD ACCEPT GOB MANAGEMENT AND ENFORCEMENT OF SHRIMP FISHERY IN RETURN FOR STATEMENT OF PRINCIPLES AND ESTABLISHMENT OF PROCEDURES UNDER WHICH US SHRIMP FISHERY COULD CONTINUE. SUCH AN AGREEMENT COULD BE RATHER FORMAL OR COULD BE IN SIMPLER FORM, SUCH AS AN EXCHANGE OF NOTES.

THE PROBLEM WITH THIS OPTION IS THAT WE WOULD EXPECT THAT NEGOTIATION OF NEW AGREEMENT, REGARDLESS OF FORM, WOULD BE QUITE DIFFICULT, AND IT COULD BE THAT NEW AGREEMENT COULD NOT BE REACHED. ALSO, DEPT FISHERY NEGOTIATORS HAVE VERY TIGHT SCHEDULES FROM NOW UNTIL END OF YEAR AS A RESULT OF THE NUMBER OF NEGOTIATIONS MADE NECESSARY BY THE US 200-MILE LEGISLATION.

6. THIRD POSSIBILITY IS TO LIVE WITHOUT GOVERNMENT-TO-GOVERNMENT AGREEMENT. THIS MAY BE NECESSARY IF GOB IS UNWILLING TO EXTEND OR RENEGOTIATE AGREEMENT, BUT SITUATION WOULD BE GREATLY ALLEVIATED IF GOB ASSURES FULL UTILIZATION OF SHRIMP RESOURCE AND ESTABLISHES UNILATERALLY PROCEDURES FOR US VESSELS TO FISH FOR SHRIMP WHICH WOULD NOT BE MORE RESTRICTIVE THAN US LAW AND WHICH WOULD PROVIDE FOR TRADITIONAL US FISHING. THE PROBLEMS WE SEE WITH THIS POSSIBILITY ARE (A) THAT THE INDUSTRY WOULD FEEL MORE COMFORTABLE WITH AGREEMENT, AND (B) THAT LEFT TO ITS OWN DEVICES, GOB MIGHT ADOPT PROCEDURES MORE RESTRICTIVE THAN US REQUIREMENTS.

7. AS CITED ABOVE, IN INTEREST OF OVERALL US-BRAZIL RELATIONSHIP, DEPT IS HOPEFUL OF BUILDING FUTURE BILATERAL ARRANGEMENT THAT (A) PROTECTS US SHRIMP INDUSTRY INTEREST, AND (B) THAT DOES NOT TRIGGER LEGISLATIVE SANCTIONS. IN LATTER REGARD, NEW LEGISLATION DOES PROVIDE FOR IMPORT PROHIBITIONS, AND FISHERMEN'S PROTECTIVE ACT AND FOREIGN MILITARY SALES ACT PROVISIONS REMAIN IN EFFECT. CONSEQUENTLY, TO AVOID LEGISLATIVELY REQUIRED REACTION, GOB MUST REMAIN REASONABLY FORTHCOMING WITH RESPECT TO SHRIMP, PARTICULARLY WHEN IT CAN BE SHOWN THAT A SURPLUS OF THE RESOURCE EXISTS WHICH BRAZILIAN FISHERMEN ARE UNABLE TO CATCH.

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8. DEPARTMENT THINKING HAS NOT JELLED ON WHICH POSSIBILITY TO PURSUE. IF CONGRESS WERE AMENABLE, PREFERRED OPTION WOULD PROBABLY BE SHORT-TERM EXTENSION OF PRESENT AGREEMENT. IF THAT IS NOT POSSIBLE, EITHER FROM USG OR GOB VIEW, WE WOULD PROBABLY SEEK NEGOTIATIONS FOR A NEW AGREEMENT, RATHER THAN ATTEMPTING TO MANAGE WITHOUT AGREEMENT IN HOPE GOB CONDITIONS WOULD MEET REQUIREMENTS OF US LAW. WHEN WE HAVE CLEARER IDEA OF BRAZILIAN THINKING, WE PLAN TO BEGIN SOUNDINGS WITH US INDUSTRY.

9. FYI- REGARDING QUESTION OF JOINT VENTURES NOTED REFTTEL, USG, PURSUANT TO ARTICLE VIII OF AGREEMENT, IS PREPARED TO ENCOURAGE THIS DEVELOPMENT BETWEEN US AND BRAZILIAN INDUSTRIES, BUT IS NOT IN POSITION TO MAKE GOVERNMENT TO

GOVERNMENT ARRANGEMENTS REGARDING SUCH ON BEHALF OF US
INDUSTRY, OR TO MAKE ANY COMMITMENTS ON THEIR BEHALF.
DURING LAST NEGOTIATION OF SHRIMP AGREEMENT U.S. INDUSTRY
REPS INDICATED THAT THEY WERE NOT INTERESTED IN JOINT
VENTURES WITH BRAZIL BECAUSE GOB TERMS AND CONDITIONS FOR
SUCH ARRANGEMENTS MADE THEM ECONOMICALLY UNATTRACTIVE.
DEPT. WILL EXPLORE QUESTION OF JOINT VENTURES WITH
INDUSTRY IN CONNECTION WITH DISCUSSIONS REGARDING SHRIMPING

ARRANGEMENTS FOR 1977 AND BEYOND.

10. ACTION REQUIRED: EMBASSY SHOULD DRAW ON ABOVE TO
DISCUSS WITH GOB 1977 SHRIMP PICTURE. EMBASSY SHOULD
MAKE POINT THAT NEW US 200-MILE FISHERIES ZONE DOES NOT
ELIMINATE POSSIBILITY OF BILATERAL FRICTION OVER FISH-
ERIES, AND THAT NEW LEGISLATION ACCORDS IMPORTANCE TO
PROTECTING BOTH TRADITIONAL FOREIGN FISHERIES OFF OUR OWN
SHORES AND TRADITIONAL US FISHING ACTIVITY IN AREAS UNDER
FISHERIES JURISDICTION OF OTHER COUNTRIES; LEGISLATION
STILL PROVIDES FOR SANCTIONS IF US TRADITIONAL FISHING
IS NOT GIVEN APPROPRIATE REGARD. THEREFORE, AGREEMENT
BETWEEN USG AND GOB REMAINS BEST WAY TO AVOID CON-
FRONTATIONAL SITUATIONS ARISING FROM FISHERIES ISSUES.
DEPT IS PARTICULARLY INTERESTED IN DETERMINING WHETHER
A SIMPLE EXTENSION IS POSSIBLE FROM GOB VIEW, OR IF GOB
WOULD BE WILLING TO ENTER NEGOTIATIONS LOOKING TOWARD A
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NEW AGREEMENT. EMBASSY INSIGHTS, COMMENTS AND SUGGESTIONS
WOULD BE MOST APPRECIATED. KISSINGER

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